

2010 -- H 7476

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS --
DECEPTIVE TRADE PRACTICES

Introduced By: Representative Robert B. Jacquard

Date Introduced: February 11, 2010

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 6-13.1-5.2 of the General Laws in Chapter 6-13.1 entitled
2 "Deceptive Trade Practices" is hereby amended to read as follows:

3 **6-13.1-5.2. Private and class actions.** – (a) Any person who purchases or leases goods
4 or services primarily for personal, family, or household purposes and thereby suffers any
5 ascertainable loss of money or property, real or personal, as a result of the use or employment by
6 another person of a method, act, or practice declared unlawful by section 6-13.1-2, may bring an
7 action under Rules of Civil Procedure in the superior court of the county in which the seller or
8 lessor resides, is found, has his or her principal place of business, or is doing business, or in the
9 superior court of the county as is otherwise provided by law, to recover actual damages or two
10 hundred dollars (\$200) whichever is greater. The court may, in its discretion, award punitive
11 damages and may provide such equitable relief as it deems necessary or proper.

12 A person may assert a claim under this section in the appropriate district court, whether
13 by way of original complaint, counterclaim, cross-claim or third-party action, for money damages
14 only. Said damages may include attorneys' fees and costs.

15 (b) Persons entitled to bring an action under subsection (a) of this section may, if the
16 unlawful method, act, or practice has caused similar injury to numerous other persons similarly
17 situated and if they adequately represent the similarly situated persons, bring an action on behalf
18 of themselves and other similarly injured and situated persons to recover damages as provided for

1 in subsection (a) of this section. In any action brought under this section, the court may in its
2 discretion order, in addition to damages, injunctive or other equitable relief.

3 (c) Upon commencement of any action brought under subsection (a) of this section the
4 clerk of court shall mail a copy of the complaint or other initial pleading to the attorney general
5 and, upon entry of any judgment or decree in the action, shall mail a copy of the judgment or
6 decree to the attorney general.

7 ~~(d) In any action brought by a person under this section, the court may award, in addition
8 to the relief provided in this section, reasonable attorney's fees and costs.~~

9 (d) If the court finds in any action commenced hereunder, that there has been a violation
10 of section 6-13.1-2, the petitioner shall, in addition to other relief provided for by this section and
11 irrespective of the amount in controversy, be awarded reasonable attorneys' fees and costs
12 incurred in said action. A respondent in a successful defense in such action shall, in addition to
13 other relief provided for by this section and irrespective of the amount in controversy, be awarded
14 reasonable attorneys' fees and costs incurred in said action.

15 (e) Any permanent injunction, judgment, or order of the court made under section 6-13.1-
16 5 shall be prima facie evidence in an action brought under this section that the respondent used or
17 employed a method, act, or practice declared unlawful by section 6-13.1-2.

18 SECTION 2. Chapter 6-13.1 of the General Laws entitled "Deceptive Trade Practices" is
19 hereby amended by adding thereto the following sections:

20 **6-13.1-2.1. Rules and regulations.** -- The attorney general may make rules and
21 regulations interpreting the provisions of section 6-13.1-2. Such rules and regulations shall not be
22 inconsistent with the rules, regulations and decisions of the federal trade commission and the
23 Federal Courts interpreting the provisions of 15 USCS 45 (a)(1) (The Federal Trade Commission
24 Act), as from time to time amended.

25 **6-13.1-5.3. Persons engaged in business -- Actions for unfair trade practices -- Class**
26 **actions -- Damages, injunction, costs.** -- Any person who engages in the conduct of any trade or
27 commerce and who suffers any loss of money or property, real or personal, as a result of the use
28 or employment by another person who engages in any trade or commerce of an unfair method of
29 competition or an unfair or deceptive act or practice declared unlawful by sections 6-13.1-2 and
30 6-13.1-3 of this chapter by any rule or regulation issued under section 6-13.1-2.2, as hereinafter
31 provided, may bring an action in the superior court, whether by way of original complaint,
32 counterclaim, cross-claim or third-party action for damages and such equitable relief, including
33 an injunction, as the court deems to be necessary and proper.

34 Such person, if he/she has not suffered any loss of money or property, may obtain such an

1 injunction if it can be shown that the aforementioned unfair method of competition, act or
2 practice may have the effect of causing such loss of money or property.

3 Any persons entitled to bring such action may, if the use or employment of the unfair
4 method of competition or the unfair or deceptive act or practice has caused similar injury or
5 numerous other persons similarly situated and if the court finds in a preliminary hearing that
6 he/she adequately and fairly represents such other persons, bring the action on behalf of
7 himself/herself and such other similarly injured and situated persons; the court shall require that
8 notice of such action be given to unnamed petitioners in the most effective, practicable manner.
9 Such action shall not be dismissed, settled or compromised without the approval of the court, and
10 notice of any proposed dismissal, settlement or compromise shall be given to all members of the
11 class of petitioner in such a manner as the court directs.

12 A person may assert a claim under this section in a district court whether by way of
13 original complaint, counterclaim, cross-claim or third-party action, for money damages only.
14 Said damages may include attorneys' fees and costs.

15 If the court finds in any action commenced hereunder, that there has been a violation of
16 section 6-13.1-2, the petitioner shall, in addition to other relief provided for by this section and
17 irrespective of the amount in controversy, be awarded reasonable attorneys' fees and costs
18 incurred in said action. No action shall be brought or maintained under this section unless the
19 actions and transactions constituting the alleged unfair method of competition or the unfair or
20 deceptive act or practice occurred primarily and substantially within the state of Rhode Island.
21 For the purposes of this section, the burden of proof shall be upon the person claiming that such
22 transactions and actions did not occur primarily and substantially within the State of Rhode
23 Island.

24 SECTION 3. This act shall take effect on January 1, 2011.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS --
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1 This act would require that a party alleging an unfair or deceptive act or practice in the
2 conduct of trade or commerce file a written demand for relief with the alleged actor at least thirty
3 days prior to filing a lawsuit. The act would also provide for the party whom the allegation is
4 made against to file an offer of settlement. Furthermore, the act would permit the awarding of
5 treble damages against parties who knowingly and willfully commit unfair or deceptive trade acts
6 or practices.

7 This act would further allow the attorney general to promulgate rules and regulations in
8 interpreting unlawful acts or practices and would provide notice, settlement claim procedures and
9 dismissal procedures.

10 This act would take effect on January 1, 2011.

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